

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 OES-06 FEA-01 SSO-00 NSCE-00
INRE-00 USIE-00 ACDA-07 AGRE-00 AID-05 CEA-01 CEQ-01
CG-00 CIAE-00 CIEP-01 COME-00 DLOS-06 DODE-00 DOTE-00
EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-01 INR-07
INT-05 IO-13 JUSE-00 NSAE-00 NSC-05 NSF-01 OMB-01
PA-01 PM-04 PRS-01 SP-02 SS-15 SAL-01 /115 R

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OES:RTSCULLY
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EUR/CAN:JHROUSE, JR.

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O 140016Z JAN 77
FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA IMMEDIATE

C O N F I D E N T I A L STATE 008596

E.O. 11652: GDS

TAGS: PBOR, EFIS, CA

SUBJECT: U.S.-CANADA MARITIME BOUNDARY AND FISHERY
NEGOTIATIONS

REFS: (A) OTTAWA 0101; (B) OTTAWA 0067; (C) OTTAWA 0056;
(D) STATE 4237

1. RECENT EMBASSY EFFORTS HAVE BEEN VERY USEFUL IN
CLARIFYING USG POSITION FOR GOC AND VICE VERSA.
2. DEPT. AGREES WITH EMBASSY'S SUGGESTION IN REF. B TO
RESPOND TO GOC WITH AIDE-MEMOIRE IN ORDER TO PIN GOC DOWN
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AS MUCH AS POSSIBLE. FOLLOWING IS TEXT THAT DEPT. PROPOSES
BE DELIVERED TO GOC.

3. BEGIN TEXT: THE EMBASSY OF THE UNITED STATES OF
AMERICA HAS THE HONOR TO REFER TO THE RECENT DISCUSSIONS
BETWEEN THE CANADIAN SECRETARY OF STATE FOR EXTERNAL AFFAIRS
AND THE AMERICAN AMBASSADOR CONCERNING FISHERIES AND

MARITIME BOUNDARY ISSUES, AND IS PLEASED TO CONFIRM THAT THE GOVERNMENT OF THE UNITED STATES IS PREPARED TO PROCEED ON THE BASIS OF THE FOLLOWING UNDERSTANDINGS, WHICH WE BELIEVE ARE CONSISTENT WITH THE ORAL UNDERTAKINGS GIVEN BY THE CANADIAN SECRETARY OF STATE DURING THAT MEETING.

THE GOVERNMENT OF THE UNITED STATES IS PREPARED TO ENDEAVOR TO CONCLUDE A SHORT-TERM FISHERY AGREEMENT WHICH WOULD EXPIRE ON DECEMBER 31, 1977, AND WOULD NOT BE EXTENDED. THE GOVERNMENT OF THE UNITED STATES IS PREPARED TO NEGOTIATE THIS AGREEMENT TO REFLECT A PATTERN OF FISHING WHICH IS CONSISTENT WITH THE STATUS QUO. THE SHORT-TERM AGREEMENT WOULD NOT PROVIDE FOR JOINT MANAGEMENT OR JOINT SURVEILLANCE AND WOULD BE STRUCTURED IN A WAY TO BE CONSISTENT WITH COASTAL STATE JURISDICTION OUTSIDE THE AREA BETWEEN THE LINES PUBLISHED BY THE TWO GOVERNMENTS.

THE GOVERNMENT OF THE UNITED STATES CONTINUES TO BELIEVE THAT THE ELEMENTS OF A SHORT-TERM AGREEMENT ARE APPARENT AND THAT THEY ARE SET FORTH IN THE EMBASSY'S AIDE-MEMOIRE OF JANUARY 9, 1977. THE GOVERNMENT OF THE UNITED STATES IS PLEASED TO LEARN THAT THE GOVERNMENT OF CANADA CAN AGREE THAT THE SHORT-TERM AGREEMENT NEED NOT PROVIDE FOR JOINT MANAGEMENT OR JOINT ENFORCEMENT IN THE AREAS OUTSIDE THE LINES PUBLISHED BY THE TWO COUNTRIES.

DURING 1977, THE GOVERNMENT OF THE UNITED STATES IS PREPARED TO PROCEED WITH NEGOTIATIONS ON LONG-TERM ARRANGEMENTS FOR EACH OF THE FOUR MARITIME BOUNDARY AREAS.
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IN THE GULF OF MAINE, THESE ARRANGEMENTS WOULD CONSIST OF FOUR ELEMENTS: BOUNDARIES, LONG-TERM FISHERY ARRANGEMENTS, LONG-TERM HYDROCARBON ARRANGEMENTS, AND ARRANGEMENTS REGARDING MARINE POLLUTION. THESE FOUR ELEMENTS WOULD BE CONSIDERED, AS APPROPRIATE, FOR THE OTHER THREE MARITIME BOUNDARY AREAS.

THE GOVERNMENT OF THE UNITED STATES WELCOMES THE SUGGESTION OF THE CANADIAN SECRETARY OF STATE WITH REGARD TO THIRD PARTY SETTLEMENT AND IS PREPARED TO REACH A MUTUAL

BOUNDARY, AND OTHER MARITIME BOUNDARIES AS MAY BE AGREED, TO BINDING THIRD PARTY SETTLEMENT IF THE TWO COUNTRIES CANNOT REACH AGREEMENT BY THE END OF 1977. THE GOVERNMENT OF THE UNITED STATES WOULD WISH TO RESUME DISCUSSION OF BOUNDARY ISSUES INCLUDING REFERENCE TO THIRD PARTY DISPUTE SETTLEMENT PROCEDURES, SHOULD THAT PROVE NECESSARY, AS SOON AS POSSIBLE.

END TEXT.

4. RE YOUR QUERY CONCERNING LEGAL AUTHORITY AFFECTING SHORT-TERM AGREEMENT (PARA. 21, 22 REF. B), UNDER PRESENT U.S. LAW, USG HAS NO AUTHORITY TO ENTER INTO A FISHERY AGREEMENT WITH CANADA THAT DOES NOT RECOGNIZE U.S. JURISDICTION IN AREAS OFF THE U.S. COAST OUTSIDE THE DISPUTED AREA. WHILE THIS REQUIREMENT COULD BE MODIFIED BY LEGISLATIVE ACTION OR BY TREATY THESE ARE UNREALISTIC COURSES OF ACTION. REGARDLESS OF WHICH OF THESE LEGAL FORMS AGREEMENT TAKES, USG MUST REQUIRE A SHORT-TERM AGREEMENT THAT OPERATES IN A MANNER WHICH IS CONSISTENT WITH U.S. JURISDICTION ON THE SOUTHERN TWO-THIRDS OF GEORGES BANK. THE FISHERY CONSERVATION AND MANAGEMENT ACT DOES NOT REQUIRE AN EXPLICIT STATEMENT RECOGNIZING U.S. JURISDICTION, BUT AT A MINIMUM WOULD REQUIRE THAT A FISHERY AGREEMENT BE CONSISTENT WITH U.S. JURISDICTION. CONFIDENTIAL

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IT WOULD BE CONTRARY TO U.S. INTERESTS TO COOPERATE WITH GOC EFFORT TO PRESERVE THE OPTION OF CLAIMING EVEN MORE OF AREAS UNDER U.S. JURISDICTION. FURTHERMORE, THERE IS NO PROSPECT THAT IT WOULD BE POLITICALLY ACCEPTABLE TO PROPOSE TO CONGRESS THAT IT TAKE LEGISLATIVE ACTION OR APPROVE A TREATY WHICH WOULD NOT BE CONSISTENT WITH U.S. JURISDICTION IN AREAS OFF THE U.S. COAST, OUTSIDE THE LINES PUBLISHED BY THE TWO GOVERNMENTS. IN PRACTICAL TERMS, THIS MEANS THAT ANY FISHERY AGREEMENT FOR THE GULF OF MAINE AREA MUST OPERATE IN A MANNER THAT (1) CANADIAN VESSELS CARRY U.S. PERMITS AND ARE SUBJECT TO U.S. ENFORCEMENT SOUTH OF EQUIDISTANCE AND (2) THAT THE AGREEMENT INCLUDE NO U.S. COMMITMENT TO CANADA IN RESPECT OF U.S. FISHING IN THE AREA SOUTH OF EQUIDISTANCE.

5. DEPT HAS BEEN UNCLEAR IF GOC IS PREPARED TO HAVE AGREEMENT ON THE ABOVE BASIS WHICH MAY NOT EXPLICITLY RECOGNIZE U.S. JURISDICTION, BUT WHICH WOULD CERTAINLY IMPLY SUCH RECOGNITION. WE ARE ENCOURAGED BY LEGAULT'S COMMENTS REPORTED REF. A. USG NEGOTIATORS HAVE SAID REPEATEDLY THAT IF IT IS A MATTER OF DRAFTING, THE USG IS PREPARED TO TRY TO BE ACCOMMODATING, BUT IF GOC RESERVATIONS GO TO HOW AGREEMENT WOULD WORK, A BASIC AND SUBSTANTIVE DIFFERENCE EXISTS WHICH MAY MAKE AGREEMENT IMPOSSIBLE. OF COURSE, WE WOULD BE PREPARED TO INCLUDE STANDARD DISCLAIMER-TYPE LANGUAGE OF THE SORT GOC INCLUDED IN ITS NOVEMBER 1, 1976 ORDER IN COUNCIL, AND WHICH LEGAULT ALSO REFERRED TO IN REF. A., PARA. 3(D).

6. EMBASSY SHOULD TRANSMIT AIDE-MEMOIRE TO GOC DRAWING ON POINTS IN PARA 4 AND 5 ABOVE AS APPROPRIATE. YOU SHOULD

NOTE THAT USG DOES REQUIRE AS A LEGAL MATTER RECOGNITION
OF U.S. JURISDICTION IN AREAS OFF U.S. COAST OUTSIDE THE
LINES PUBLISHED BY THE TWO COUNTRIES. WE DO NOT REQUIRE
A CANADIAN DECLARATION RECOGNIZING SUCH JURISDICTION; BUT,
THE AGREEMENT ITSELF MUST OPERATE IN A MANNER THAT IS
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FULLY CONSISTENT WITH U.S. JURISDICTION.
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Message Attributes

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